

Chapter 1

Introduction

This chapter provides a brief overview of the proposed Bel Marin Keys Unit V (BMKV) Expansion of the Hamilton Wetland Restoration Project (HWRP), describes the environmental review requirements that must be met prior to project approval; identifies the intent and scope of this document; and identifies the local, state, and federal permits expected to be necessary for project implementation.

Overview of the Proposed Wetland Restoration

The proposed BMKV expansion site is located in the San Francisco Bay Estuary in unincorporated Marin County and Novato, California (see figure 1-1). The 1,584-acre expansion site is bounded by Novato Creek and the Bel Marin Keys (BMK) residential development to the north, Pacheco Pond to the west, the authorized HWRP site to the south (which includes both the Hamilton Army Airfield [HAAF] and State Lands Commission [SLC] parcels), and San Pablo Bay to the east (see figure 1-2). An 8-acre triangular-shaped parcel located north of Bel Marin Keys Boulevard (figure 1-2) is also part of the proposed BMKV expansion site. However, no activities are proposed that would alter habitat on this site. Potential restoration-related activities that may occur on this site include control of invasive plant species. The remainder of the site where existing habitat will be changed is approximately 1,576-acres in size. The BMKV expansion site historically supported subtidal mudflat, tidal marsh, and freshwater wetland habitats. The proposed wetland restoration would return the site to seasonal and tidal wetland conditions and reestablish important ecological functions in the San Francisco Bay Estuary.

This supplemental environmental impact report/environmental impact statement (SEIR/EIS) presents an evaluation of the impacts associated with restoration of wetlands at the BMKV expansion site and the adjacent SLC parcel. Restoration at the SLC parcel is included in the authorized HWRP, but it is also included in this document because of its hydrological connection to the BMKV site and because several changes would be necessary to restoration design on the SLC parcel to integrate the BMKV site. This document is a supplement to the final EIR/EIS for the HWRP, which was certified in December 1998.

State and Federal Agency Sponsors

The U.S. Army Corps of Engineers, San Francisco District (Corps) and the California State Coastal Conservancy (Conservancy), in collaboration with the San Francisco Bay Conservation and Development Commission (BCDC), are seeking to restore the BMKV property as an expansion of the HWRP. In 2001, the Conservancy purchased the BMKV property with the intent of including it as an expansion of the HWRP. The Corps and the Conservancy will serve as the federal and state lead agencies, respectively, for the authorized HWRP and the proposed BMKV expansion.

Overview of the National Environmental Policy Act and the California Environmental Quality Act

When a project¹ is subject to review under both the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA), state and local agencies are encouraged to cooperate with federal agencies in the environmental review process and to prepare a joint environmental document. The Conservancy and the Corps have determined that the proposed BMKV expansion could significantly affect the environment and have therefore prepared this joint SEIR/EIS.

NEPA (42 United States Code [USC] 4321; 40 Code of Federal Regulations [CFR] 1500.1) is the nation's broadest environmental law. It provides an interdisciplinary framework for federal agencies to prevent environmental damage and contains action-forcing procedures to ensure that federal agency decision makers take environmental factors into account. NEPA applies to all federal agencies and to most of the activities they manage, regulate, or fund that affect the environment. It requires all agencies to consider and to publicly disclose the environmental implications of their proposed actions through the preparation of appropriate documents. The President's Council on Environmental Quality (CEQ) has adopted regulations and other guidance that provide detailed procedures that federal agencies must follow to implement NEPA. NEPA requires that every federal agency prepare an environmental impact statement (EIS) for proposed legislation or other major federal actions "significantly affecting the quality of the human environment." 42 U.S.C. 4332; 40 C.F.R. 1501.

According to the CEQ NEPA Regulations (40 CFR 15029[c][1]), a federal agency must prepare a supplement to a draft or final EIS if:

¹ The term *project* used in this SEIR/EIS refers explicitly to the term as defined under CEQ's regulations for NEPA and the State CEQA Guidelines: "the entirety of an action which has a potential for resulting in a physical change in the environment." The Corps defines *project* as "an action that has been authorized by Congress," such as the HWRP. The BMKV expansion has not been authorized by Congress.

- the federal agency makes substantial changes in the proposed action that are relevant to its environmental effects, or
- there are significant new circumstances or information relevant to the environmental concerns that bear on the proposed action.

In addition, federal agencies have the discretion to prepare a supplement to an EIS in any circumstance in which they determine that such a supplement would further the purposes of NEPA (40 CFR 1502.9[c][c]). This SEIR/EIS was prepared to comply with the requirements of NEPA and its relevant implementing regulations.

CEQA requires state and local agencies to estimate and evaluate the environmental implications of their actions and aims to prevent adverse environmental impacts of those actions by requiring those agencies, when feasible, to avoid or reduce significant environmental impacts. CEQA requires that the lead agency prepare an environmental impact report (EIR) when the lead agency determines that a project may have a significant effect on the environment.

According to CEQA Guideline 15162, a supplemental EIR must be prepared if the agency with continuing discretionary authority over the project determines on the basis of substantial evidence in light of the whole record that:

- substantial changes proposed in the project will require major revisions to the previous EIR because of the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects,
- substantial changes occur with respect to the circumstances under which the project is undertaken that will require major revision of a previous EIR because of the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects, or
- new information of substantial importance that was not known or could not have been known without exercise of reasonable diligence at the time the previous EIR was certified.

The 1998 EIS/EIR for the HWRP studied the incorporation of the BMKV site into the HWRP at a programmatic level. The feasibility study for the HWRP stated that the BMKV site had a high potential to substantially increase the amount of land available for wetland restoration (U.S. Army Corps of Engineers 1998). However, the selected alternative for the 1998 HWRP did not include BMKV because the site was privately owned at that time. The Conservancy purchased the site in 2001, with the intent of proposing wetland restoration at the site, in cooperation with the Corps. This SEIR/EIS was prepared to comply with the requirements of CEQA, NEPA and their relevant implementing regulations.

Public Involvement and Scoping

The intent of both NEPA and CEQA is to establish opportunities for the public to review and comment on projects that may affect the environment. Both NEPA and CEQA provide for public participation through:

- project scoping,
- publication of project Notice of Intent/Notice of Presentation,
- public review of environmental documents, and
- public hearings.

NEPA and CEQA also require that a final EIS/EIR include responses to all comments received from the public regarding the draft EIS/EIR. The following sections provide additional information on public involvement in the environmental review process.

Project Scoping

Scoping refers to the process used under both NEPA and CEQA to determine the focus and content of an EIS/EIR. Scoping identifies the range of project alternatives and mitigation measures to be analyzed in depth. Scoping is also helpful in establishing methods of assessment and in selecting the environmental effects to be considered in detail. Tools used in scoping of this SEIR/EIS included early public and interagency consultation, public scoping meetings, and publication of the project Notice of Intent (NOI) and Notice of Preparation (NOP).

Notice of Preparation and Notice of Intent

The purpose of the NOI and NOP is to solicit participation in determining the scope of an EIS/EIR from responsible and coordinating federal, state, and local agencies and from the public. The lead agencies formally initiated the scoping process for this SEIR/EIS in November 2001 by submitting the NOP to the California State Clearinghouse in compliance with CEQA and publishing the NOI in the Federal Register in compliance with NEPA. In addition, a notification letter was distributed to all interested agencies, organizations, and members of the public. The public scoping period for this document ended December 31, 2001.

Public Scoping Meetings

During the restoration planning process, the lead agencies held 2 public meetings to introduce interested members of the public to the project and to solicit public input. These meetings were held on September 25, 2001 and December 5, 2001. The initial public meeting provided the public with an opportunity to meet the project sponsors, to review and discuss the project goals and objectives, and to provide input on site-related opportunities and constraints. The second public meeting provided a forum for discussion of alternative restoration concepts and potential environmental issues, and served as a formal scoping meeting for the environmental compliance process. Public comments received at these meetings were recorded for consideration during the restoration planning process. In addition, participants at the second public meeting were encouraged to submit written comments to the project sponsors during the public comment period.

Distribution and Review of the Draft SEIR/EIS

The lead agencies submitted a notice of intent to the federal register and a notice of preparation to the California State Clearinghouse and interested parties announcing the availability of this draft SEIR/EIS for a 45-day public review and comment period. The public review and comment period was held from July 19, 2002, through September 2, 2002. The lead agencies extended the comment and review period through September 13, 2002, in order to allow sufficient time for all comments to be submitted. During this period, state and federal regulatory agencies, local government agencies, and members of the public reviewed the Draft SEIR/EIS and submitted comments on the document to the lead agencies. Additionally, the lead agencies held a public meeting on August 21, 2002, in Marin County to solicit any verbal comments on the Draft SEIR/EIS.

Final SEIR/EIS

Following the public review and comment period, the Conservancy and the Corps collated and addressed all environmental comments received on the Draft SEIR/EIS. Pursuant to CEQA and NEPA, the agencies prepared responses to these comments and revised the Draft SEIR/EIS where substantive comments required changes or refinements to the analysis. The comments on the Draft SEIR/EIS and the responses to these comments are presented in Responses to Comments for the Final SEIR/EIS. Changes to the text of the Draft SEIR/EIS are noted in the Responses to Comments and made in the text of the Final SEIR/EIS. While CEQA requires incorporation of responses to comments in a final EIR and provision of those responses to commenting public agencies prior to certification of a final EIR, it does not require a formal public comment period on a final EIR. However, pursuant to NEPA, the lead agencies will circulate the Final SEIR/EIS for a 30-day review and comment period prior to the certification of the SEIR/EIS and filing of a Record of Decision.

Intent and Scope of this SEIR/EIS

Intent

The intent of this SEIR/EIS is to:

- identify potential direct, indirect, and cumulative environmental impacts associated with the proposed wetland restoration project;
- describe mitigation measures intended to avoid potentially significant project impacts or reduce them to a less-than-significant level; and
- disclose potential project impacts and proposed mitigation measures for public review and comment.

This SEIR/EIS is also intended to supply the information necessary to support additional permit application and review processes related to this project.

Scope

This SEIR/EIS describes the features of the proposed BMKV expansion and restoration alternatives, including the No-Project Alternative, under which current management of the expansion site would continue and existing conditions would remain generally unchanged. As required by NEPA and CEQA, it evaluates the potential impacts of the proposed BMKV expansion and all restoration alternatives on the following resource topics.

- Geology, soils, and seismicity
- Surface-water hydrology and tidal hydraulics
- Water quality
- Public health
- Biological resources
- Land use and public utilities
- Hazardous substances and waste
- Transportation
- Air quality
- Noise
- Cultural resources
- Aesthetics

The study area addressed in this SEIR/EIS includes the BMKV parcel (figure 1-1) and the adjacent SLC parcel (figure 1-2), as well as Pacheco Pond, Novato Creek, and surrounding areas. In addition to effects on the BMKV site itself and surrounding environments, this document analyzes the environmental effects of the proposed BMKV expansion on the SLC parcel for specific resource topics. The SLC parcel is already part of the authorized HWRP, but the BMKV expansion would include several restoration design changes to the SLC parcel, and thus the effects of these changes are described in this document. For some resource topics (e.g., biological resources, hydrology, and water quality), this document also discusses conditions in the larger San Francisco Bay watershed. The terms *expansion area* and *expansion site* are used interchangeably throughout this document to refer to the location of the proposed wetland restoration activities on the BMKV parcel itself. The SLC parcel is referred to separately since it is already part of the authorized HWRP. Areas outside of the BMKV parcel or SLC parcel (such as Novato Creek) that may be affected by proposed activities are referenced by location.

List of Local, State, and Federal Permits

The local, state, and federal permits and other approvals expected to be necessary for implementation of this project are listed in table 1-1. The local and state public agencies listed in table 1-1 are considered responsible agencies as defined in CEQA and would use the analysis in this document when considering issuance of the permits identified in the table. The federal agencies would use the analysis in this document when completing NEPA compliance for the identified permits.

Table 1-1. List of Local, State, and Federal Permits and Other Approvals Expected for the BMKV Expansion of the HWRP

Agency	Jurisdiction Related to Project	Areas of Jurisdiction Related to Project	Approvals/Permits
LOCAL/REGIONAL			
Marin County Department of Planning and Building Services	Marin Countywide Plan	BMKV	Determination of consistency with General Plan and zoning.
Marin County Department of Public Works	Marin Zoning Code	BMKV	Determination of consistency with F1 and F2 zoning
Flood Control and Water Conservation District (MCFCWCD)	F1 and F2 Zoning Ordinances	BMKV	
	1980 and 1987 Drainage Easements	BMKV	Amendment of existing drainage agreements on BMKV
	Ownership of Pacheco Pond	Pacheco Pond	Encroachment permits for work on MCFCWCD land and approval of easement for Bay Trail if proposed on MCFCWCD land.
City of Novato	Ownership of land west of HWRP	Portions of Bay Trail on city-owned land (Alt. 1 only)	Amendment of existing DFG–MCFCWCD management agreement for Pacheco Pond Construction of Bay Trail on city-owned land (Alt. 1 only)
	Novato General Plan Novato Zoning Code	Portions of Bay Trail within City of Novato	Approval of Bay Trail where proposed by construction by others on areas within city jurisdiction
Bel Marin Keys Community Services District (BMK CSD)	Levee maintenance easement	BMK south lagoon levee	Potential Amendment of levee maintenance easement
	1997 Drainage agreement	BMK south lagoon levee culvert for drainage onto BMKV	Amendment of 1997 Drainage Agreement
Novato Sanitary District (NSD)	Sanitary outfall easement	Outfall easement	Amendment of outfall easement Replacement or retrofit of outfall
STATE			
California State Coastal Conservancy (Conservancy)	Ownership of site/Project Sponsor	BMKV	Approval and funding of project

Agency	Jurisdiction Related to Project	Areas of Jurisdiction Related to Project	Approvals/Permits
San Francisco Bay Conservation and Development Commission (BCDC)	Conservancy authorizing legislation McAteer-Petris Act/ San Francisco Bay Plan	Areas within 100 feet of Bay and tidal reach of Novato Creek	Permit approval for project.
	Coastal Zone Management Act (CZMA)		Review of federal permit for consistency
Bay Area Air Quality Management District (BAAQMD)	LTMS cooperating agency Construction emissions	Use of dredged material Project Area	DMMO determinations of suitability Potential Permits for Diesel Off-loading and Booster Pumps
San Francisco Regional Water Quality Control Board (SFRWQCB)	Porter-Cologne Water Quality Control Act	Water Quality/Discharge	Review of conformity analysis Waste Discharge Requirements for Construction
	Clean Water Act Section 401	Existing U.S. wetlands/waters	CWA Section 401 certification of Corps permit
	Clean Water Act Section 402	Stormwater runoff	Stormwater Pollution Prevention Plan (SWPPP)\
California Department of Fish and Game (DFG)	LTMS cooperating agency California Endangered Species Act (CESA)	Use of dredged material BMKV	DMMO determinations of suitability Memorandum of Agreement (MOA) if listed state species affected by project
	California Fish and Game Code	Novato Creek	Streambed Alteration Agreement (1603) for alterations to Novato Creek
	Pacheco Pond	DFG	Amendment of existing DFG-MCFCWCD management agreement for Pacheco Pond.
California Department of Toxic Substances and Control (DTSC)	Potentially contaminated sites	BMKV	Approval of remediation plans for identified areas of contamination, if needed.

Agency	Jurisdiction Related to Project	Areas of Jurisdiction Related to Project	Approvals/Permits
State Historical Preservation Office (SHPO)	National Historic Preservation Act (NHPA), Section 106	Potential archeological and historical sites	Review of Corps Section 106 report.
FEDERAL			
U.S. Army Corps of Engineers (Corps)	Project Sponsor	BMKV	Corps Approval of Project
	Clean Water Act Section 404	BMKV Pacheco Pond Novato Creek	Section 404 Review
	Rivers and Harbors Act of 1899, Section 10	BMKV Novato Creek San Pablo Bay	Section 10 Review
	LTMS Cooperating Agency	Use of dredged material	DMMO determinations of material suitability
U.S. Fish and Wildlife Service	Federal Endangered Species Act (FESA)	Locations/habitat for listed federal species	ESA Section 7 Consultation
	Fish and Wildlife Coordination Act (FWCA)	Project area	Coordination Act Report (CAR)
National Marine Fisheries Service	Federal Endangered Species Act (FESA)	Locations/habitat for listed federal species	ESA Section 7 Consultation
	Marine Mammal Protection Act (MMPA)	San Pablo Bay	MMPA Consultation
	Fish and Wildlife Coordination Act (FWCA)	Project Area	Coordination Act Report (CAR)
	Magnuson Fisheries Conservation Act (MFCA)	Essential Fish Habitat (San Pablo Bay and Novato Creek)	EFH Consultation

Agency	Jurisdiction Related to Project	Areas of Jurisdiction Related to Project	Approvals/Permits
U.S. Coast Guard	Rivers and Harbors Act of 1899, Section 9	San Pablo Bay	Review of any potential structures within navigable waters (e.g. off-loading and booster pump platforms and unloading pipeline).
U.S. Environmental Protection Agency (EPA)	LTMS cooperating agency	Use of dredged material	DMMO determinations of material suitability
Natural Resources Conservation Service (NRCS)	Farmland Protection Policy Act	BMKV farmlands	Federal lead agency (Corps) responsible to consult with NRCS and complete of land evaluation and site assessment
Advisory Council on Historic Preservation	National Historic Preservation Act (NHPA), Section 106	Potential archeological and historical sites	Review of Corps Section 106 report.
LTMS = Long-Term Management Strategy for Disposal of Dredged Material in San Francisco Bay DMMO = Dredged Material Management Office			